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No. 29

In the Supreme Court of the United States

OCTOBER TERM, 1961

KERR STEAMSHIP CO., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND
FEDERAL MARITIME BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENTS SUGGESTING MOOTNESS

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The decision below (284 F. 2d 61) affirmed an order of the Federal Maritime Board issued under Section 21 of the Shipping Act (46 U.S.C. 820) requiring every common carrier by water subject to the Shipping Act, 1916, as amended, to file with the Board copies of specified types of agreements. On February 1, 1961, respondents filed a memorandum suggesting that the Court defer action on the petition for certiorari pending disposition of a group of related cases arising out of the same order which were then *sub judice* before the Court of Appeals for the District of Columbia Circuit. Petitioners concurred in this suggestion.

On June 30, 1961, the District of Columbia Circuit issued its decision in the related cases. *Montship Lines, Ltd.* v. *United States*, 295 F. 2d 147. It held that the Board had authority under Section 21 of the Shipping Act to require carriers to submit such reports. It further held, however, that since the order did not set forth the purpose for which the particular information was sought, the court could not determine the relevancy of the information demanded and, therefore, could not determine the reasonableness of the order. The court vacated the order and remanded the case to the Board for further proceedings.

On September 28, 1961, respondents filed in this Court a supplemental memorandum, stating that they did not intend to seek review in the *Montship* case, and, suggesting that the Court should defer action on the petition until the Federal Maritime Commission (which succeeded to the powers and duties of the Federal Maritime Board on August 12, 1961) could reconsider the order. This suggestion was opposed by petitioners in a memorandum dated October 3, 1961.

On February 9, 1962, the Federal Maritime Commission issued an order (set forth in the Appendix, *infra*) reversing and vacating, as to petitioners and others, the Board's Section 21 order of April 11, 1960, so as to put them on a par with the carriers who secured relief in the *Montship* case. Since the only question raised in the petition for certiorari is the validity of the order of April 11, 1960, the vacation of that order has rendered this case moot. "Where by an act of the parties, * * * the existing con-

troversy has come to an end, the case becomes moot and should be treated accordingly." (*United States* v. *Alaska S. S. Co.*, 253 U.S. 113, 116.) It is therefore suggested that the petition for a writ of certiorari should be granted, the judgment below should be vacated, and the case should be remanded to the court of appeals with directions to dismiss the petition for review as moot. *United States* v. *Munsingwear Inc.*, 340 U.S. 36, 39–40; *Securities and Exchange Commission* v. *Engineers Public Service Company*, 332 U.S. 788; *Eastern Air Lines, Inc.* v. *Civil Aeronautics Board*, 341 U.S. 901; *Securities and Exchange Commission* v. *Philadelphia Co.*, 337 U.S. 901; see *A. L. Mechling Barge Lines* v. *United States*, 368 U.S. 324, 329–330.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JAMES L. PIMPER,
General Counsel,
Federal Maritime Commission.

MARCH 1962.

APPENDIX

(Served February 9, 1962, Federal Maritime Commission)

At a Session of the FEDERAL MARITIME COMMISSION held at its office in Washington, D.C., on the 29th day of January, 1962

NOTICE OF REVERSAL OF SECTION 21 ORDER OF APRIL 11, 1960 AS TO CERTAIN CARRIERS

On April 11, 1960, the Federal Maritime Board issued an order entitled "Section 21 Order, Contracts, Agreements and Understandings of Common Carriers By Water." The order was directed to every common carrier by water subject to the provisions of the Shipping Act, 1916, and required them to file with the Board certain information.

Many of the carriers to whom the order of April 11, 1960 was directed filed petitions for judicial review in the United States Court of Appeals for the District of Columbia Circuit, and also obtained a stay of the order pending the Court's decision. On June 30, 1961, in *Montship Lines, Ltd. et al.* v. *United States*, 295 F. 2d 147, the Court vacated the order and remanded it to the Board for further proceedings, because it failed to state the purpose for which issued.

Other carriers to whom the Board's order of April 11, 1960 was directed petitioned for judicial review in the Court of Appeals for the Second Circuit. On October 31, 1960, in *Kerr Steamship Company, Inc., et al.* v. *United States*, 284 F. 2d 61, the Second Cir-

cuit affirmed the Board's order and dismissed that case. Thereafter, Kerr et al. petitioned the Supreme Court of the United States for a writ of certiorari, and this petition is currently pending. A similar suit, *States Marine Lines, et al.* v. *United States*, No. 26,328, is pending and unacted upon in the Second Circuit.

The District of Columbia Circuit's decision vacating the order as to the great majority of the carriers who sought judicial review, makes it necessary for the Federal Maritime Commission, as successor to the Board, to consider what further action should be taken. The Commission's consideration and treatment of the matter should, of course, be uniform, since all of the carriers involved, those who sued in the Second Circuit as well as those who sued in the District of Columbia Circuit, are affected by the same order. In furtherance of this purpose, the Commission deems it advisable to reverse and thus vacate the order as to the carriers who brought suit in the Second Circuit.

THEREFORE, IT IS ORDERED, pursuant to section 25 of the Shipping Act, 1916 (46 U.S.C. 824), That the Federal Maritime Board's order dated April 11, 1960 and entitled "Section 21 Order, Contracts, Agreements and Understandings of Common Carriers By

Water", is hereby reversed and vacated as to the following named common carriers by water:

States Marine Lines, Inc.;
Global Bulk Transport Corporation;
Global Transport, Ltd.;
Isthmian Lines, Inc.;
Kerr Steamship Company, Inc.;
Compania Maritima del Nervion;
Naviera Aznar S.A.;
Rex Line Rederiaktiebolaget; and

Skibsaktieselskapet Arizona Skibsaktieselskapet Astrea Skibsaktieselskapet Aruba Skibsaktieselskapet Noruega Skibsaktieselskapet Abaco, and A S Atlantica	conducting a joint common carrier service pursuant to FMC Agreement No. 7593, under the name Hoegh Lines.

By the Commission.

THOMAS LISI, *Secretary.*